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CHIEF JUDGE THOMAS O. RICE

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 MONTY AND MICHELLE
11 COORDES, individually and on behalf
of all others similarly situated

12 Plaintiffs,

13 v.

14 WELLS FARGO BANK, N.A.,

15 Defendant.
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21
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25
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No. 2:19-CV-00052-TOR

**DEFENDANT'S MOTION TO
STAY PROCEEDINGS
PENDING FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT**

MOTION TO STAY
NO. 2:19-00052-TOR

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I. INTRODUCTION

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) submits this motion seeking a stay of these proceedings until the United States District Court for the Northern District of California rules on whether to approve the proposed nationwide class settlement in *Hernandez v. Wells Fargo Bank N.A.*, No. 3:18-cv-07354-WHA (N.D. Cal.). A stay is warranted for the reasons set forth below.

II. BACKGROUND

Beginning with putative nationwide class action *Hernandez v. Wells Fargo Bank, N.A.*, No. 3:18-cv-07354-WHA (N.D. Cal.), filed on December 5, 2018 in the Northern District of California, thirteen lawsuits have been filed in various jurisdictions across the country alleging that an error in Wells Fargo’s automated decisioning software led the Bank to erroneously deny trial loan modifications to a small percentage of its borrowers. According to the lawsuits, these denials resulted from a software miscalculation of attorneys’ fees used in determining whether borrowers were eligible for trial loan modifications under federal programs such as the Home Affordable Modification Program (“HAMP”). Other than *Hernandez*, four putative class actions¹ and five individual actions² are currently pending across six federal jurisdictions.³ Of these class actions, two

¹ *Coordes v. Wells Fargo Bank, N.A.*, No. 2:19-cv-00052-TOR (E.D. Wash.); *Dore v. Wells Fargo Bank, N.A.*, 2:19-cv-01601-MJH (W.D. Pa.); *Hawkins-Ryder v. Wells Fargo Bank, N.A.*, No. 1:19-cv-00638-TSB (S.D. Ohio); *Liguori v. Wells Fargo Bank, N.A.*, 7:19-cv 10677 (S.D.N.Y.).

² *Curran v. Wells Fargo Bank, N.A.*, No. 1:20-cv-00492 (D.D.C.); *Duncan v. Wells Fargo Bank, N.A.*, No. 3:19-cv-00172-BRM-TJB (D.N.J.); *Thomas v. Wells Fargo Bank, N.A.*, No. 1:20-cv-00229-SDG-RGV (N.D. Ga.); *Van Brunt v. Wells Fargo Bank, N.A.*, No. 3:19-cv-00170-BRM-TJB (D.N.J.); *West v. Wells Fargo Bank, N.A.*, No. 5:19-cv-00286-JMH-MAS (E.D. Ky.).

³ Three other actions have been dismissed.

1 allege national classes⁴ and two allege state classes.⁵ All cases except
 2 *Hernandez* (including this one) are in their initial pretrial stages, with little or no
 3 discovery having occurred and most with pending motions to dismiss.

4 On November 14, 2019, Wells Fargo moved to stay these proceedings
 5 under the first-to-file rule or, alternatively, under the Court's discretionary
 6 authority. Dkt. 68. Plaintiffs opposed the motion, arguing that the *Hernandez*
 7 plaintiffs were "seeking to certify a California-only class that would not include
 8 [Plaintiffs]." Dkt. 62 at 1. In denying the motion without prejudice, this Court
 9 observed that

10 the scope of plaintiffs in each case is uncertain. ... [R]ecent
 11 developments in *Hernandez* indicate that the Court may be inclined
 12 to certify only the proposed California subclass of plaintiffs. If this
 13 is the case, the [Plaintiffs], their Washington subclass, and much of
 14 their nationwide class would not overlap with the *Hernandez*
 15 California class.

16 []

17 [Wells Fargo]'s arguments rely on assumptions about class
 18 certification that have not yet been resolved but will be resolved
 19 shortly based on pending motions in this district and in *Hernandez*.
 20 Because the relationship between this matter and *Hernandez* is
 21 unclear but will soon be more clearly defined, the Court declines to
 22 exercise its discretion at this stage to stay the proceedings in this
 23 case.

24 Dkt. 68 at 8-10. The Court invited Wells Fargo to renew its motion "[a]s the
 25 identity of the parties becomes clearer with further proceedings in both cases."
 26 *Id.* at 9.

Further proceedings have since clarified the identity of the parties, and

⁴ *Coordes; Dore*.

⁵ *Liguori; Hawkins-Ryder*. *Dore* alleges a national class but asserts a Pennsylvania state subclass in the alternative. Plaintiffs here also assert a Washington state subclass for their Washington consumer protection claim.

1 further underscore the significant overlap between *Hernandez* and this case. On
 2 January 2019, 2020, the Northern District of California certified a nationwide
 3 breach of contract class in *Hernandez*, consisting of borrowers who were
 4 erroneously denied a trial loan modification between 2010 and 2018 and whose
 5 homes Wells Fargo sold in foreclosure. Class Cert. Order (Exhibit A) at 4. This
 6 class covers Plaintiffs themselves, as well as 510 of the more than 800 total
 7 borrowers affected by the error. The parties in *Hernandez* have already
 8 negotiated a preliminary settlement agreement that will settle all class member
 9 claims, including Plaintiffs here. The court granted preliminary approval of that
 10 settlement on April 19, 2020. Prelim. Approval Order (Exhibit B).⁶ If finally
 11 approved, that settlement will resolve Plaintiffs' claims, as well as the claims of
 12 more than 500 of the putative class members they seek to represent. *See* Dkt. 43
 13 ¶ 10.

14 On January 14, 2020, Plaintiffs here filed a petition with the Judicial Panel
 15 on Multidistrict Litigation ("JPML"), seeking to join all of these actions in a
 16 Multidistrict Litigation ("MDL") and requesting that the cases be transferred
 17 pursuant to 28 U.S.C. § 1407 and consolidated in either the Northern District of
 18 California or the Eastern District of Washington. The JPML considered the
 19

20 ⁶ The *Hernandez* settlement class essentially mirrors the certified class: "All
 21 persons in the United States who between 2010 and 2013 (i) qualified for a home
 22 loan modification or repayment plan pursuant to the requirements of government-
 23 sponsored enterprises (such as Fannie Mae and Freddie Mac), the Federal
 24 Housing Administration (FHA), the U.S. Department of Treasury's Home
 25 Affordable Modification Program (HAMP); (ii) were not offered a home loan
 26 modification or repayment plan by Wells Fargo due to excessive attorney's fees
 being included in the loan modification decisioning process; and (iii) whose
 home Wells Fargo sold in foreclosure." Prelim. Approval Order (Exhibit B) at
 1-2.

petition on March 26, 2020 and declined to consolidate, finding that although “five [of the actions] assert at least somewhat overlapping classes of borrowers[,]” the parties have “reached a proposed settlement for the certified class, and they intend to move for preliminary approval in less than a week[,]” and “the proposed class settlement may resolve at least some claims in [each] litigation” JPML Order (Exhibit C) at 1-2. The JPML noted specifically that “there are alternatives to centralization available to minimize any overlap in pretrial proceedings, including informal cooperation and coordination of all actions, or other cooperative arrangements, such as a stay of the other cases while the settlement in *Hernandez* proceeds.” *Id.* at 2 (emphasis added). That is exactly what should occur here; this case should be stayed pending final approval of the settlement in *Hernandez* to minimize any overlap in pretrial proceedings and conserve party and judicial resources.

III. ARGUMENT

A. Legal Standard

A district court has discretionary power to stay proceedings before it. *See Clinton v. Jones*, 520 U.S. 681, 707-08 (9th Cir. 1997). This power to stay is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “Economy of time and effort is best accomplished by the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Id.* at 254-55.

When considering a motion to stay, the court “weighs a series of competing interests: (1) the possible damage that may result from the granting of the stay; (2) the hardship or inequity which a party may suffer in being required to go

1 forward; and (3) the orderly course of justice measured in terms of the
 2 simplification of issues, proof, and questions of law that could be expected to
 3 result from a stay.” *Pearson v. Wells Fargo, N.A.*, 2014 WL 2452802, at *3
 4 (W.D. Wash. June 2, 2014) (citing *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th
 5 Cir. 1962)). As shown below, these factors weigh in favor of a stay here.

6 **B. The Court Should Stay These Proceedings Pending Final Approval**
 7 **of the *Hernandez* Settlement.**

8 Here, multiple lawsuits alleging similar facts exist around the country, and
 9 although an MDL panel declined to consolidate the actions, the panel suggested
 10 the alternative of “informal cooperation and coordination of all actions.” Exhibit
 11 C at 2. More specifically, the JPML explained that “a stay of the other cases
 12 while the settlement in *Hernandez* proceeds” may “minimize any overlap in
 13 pretrial proceedings.” *Id.* This Court also previously recognized that as “the
 14 relationship between this matter and *Hernandez*” became “more clearly defined,”
 15 a stay might be appropriate. Dkt. 68 at 10. As shown below, the panel and this
 16 Court were correct. Indeed, “[c]ourts routinely exercise [their discretionary]
 17 power and grant stays when a pending nationwide settlement could impact the
 18 claims in the case before them.” *Pieterston v. Wells Fargo Bank, N.A.*, 2019 WL
 19 1466963, at *1 (N.D. Cal. Feb. 14, 2019) (quotations and citation omitted). This
 20 Court should do the same.

21 **1. Plaintiffs Will Not Be Damaged if the Court Grants the Stay.**

22 The first factor weighs in favor of the stay.

23 Final approval of the *Hernandez* settlement will impact this case. It would
 24 resolve Plaintiffs’ claims against Wells Fargo if they do not opt out of the class,
 25 and they will have suffered no prejudice as a result of a stay, as this option would
 26

1 provide them relief much sooner than would litigating this action through trial.
 2 Moreover, if Plaintiffs ultimately choose to opt out of the *Hernandez* settlement
 3 class, they can continue pursuing their claims with a clearer understanding of
 4 whether there is any putative class they can represent. Either way, Plaintiffs’
 5 decision not only affects their rights and strategy with respect to their own claims,
 6 but also the viability of any class allegations.

7 Moreover, a stay will be minimally disruptive to the current schedule.
 8 Wells Fargo’s motion to dismiss the Second Amended Complaint will be fully
 9 briefed upon the filing of Wells Fargo’s reply, and only minimal discovery has
 10 occurred. Moreover, in accordance with the Court’s April 6, 2020 Order (Dkt.
 11 90), the parties agree that changes will be needed to the Jury Trial Scheduling
 12 Order. Thus, the anticipated four-month delay⁷ caused by the stay will not hinder
 13 Plaintiffs’ ultimate ability to pursue their claims. *See Pieterston*, 2019 WL
 14 1466963, at *1 (rejecting plaintiffs’ claim of delay as a reason to deny the stay);
 15 *Pearson*, 2014 WL 2452802, at *3 (“The court sees no reason why the stay would
 16 actually hinder [plaintiff’s] ability to ultimately bring her suit here. The stay
 17 would only delay the action for approximately four months. After that time, [she]
 18 may move to lift the stay and continue with her present suit here.”); *Cassery v.*
 19 *Power Balance LLC*, 2011 WL 13220130, at *2 (C.D. Cal. June 13, 2011)
 20 (agreeing with defendants “that there is little damage to Plaintiff from granting
 21 the stay because it will only be a few months until the Court in Batungbacal holds
 22 a hearing for final approval of the settlement” and “Plaintiff’s ability to intervene
 23 or file any objections to the Batungbacal settlement is unaffected”).

24 In sum, the first factor weighs in favor of a stay.

25 _____
 26 ⁷ The final approval hearing in *Hernandez* is scheduled for August 20, 2020.
 Prelim. Approval Order (Exhibit B) at 2.

1 **2. Wells Fargo Stands to Suffer Hardship and Inequity If the**
 2 **Stay Is Not Granted.**

3 The second factor also weighs in favor of granting the stay because Wells
 4 Fargo stands to suffer hardship and inequity if this action is not stayed. If this
 5 case proceeds, Wells Fargo faces duplicative and unnecessary discovery between
 6 this case and the discovery conducted in *Hernandez*. Plaintiffs allege a
 7 nationwide class consisting of over 800 borrowers—510 of whom are members
 8 of the *Hernandez* settlement class. Plaintiffs also allege a Washington-only class
 9 consisting of, at the high end, 15 total members, 10 of whom are members of the
 10 *Hernandez* settlement class (including Plaintiffs). The resolution of *Hernandez*
 11 will therefore have a significant impact on the scope of, and issues in, this case.
 12 Obviously, final approval of the *Hernandez* settlement will resolve the claims of
 13 most of the putative nationwide class here, to the extent they do not opt out.
 14 Moreover, any purported Washington state class may already fail numerosity and
 15 impracticality of joinder requirements, and this will only become more clear as
 16 Washington borrowers decide whether to remain in the *Hernandez* settlement. A
 17 stay is needed so the parties can assess the effect the *Hernandez* settlement has
 18 on this and other issues relevant to whether and what type of class claims
 19 Plaintiffs can maintain.

20 Moreover, until the settlement class is set in *Hernandez*, and final relief
 21 approved, the scope and nature of the class claims in this case cannot be
 22 ascertained. The appropriate scope for class and merits discovery cannot be set
 23 before Plaintiffs know the size and nature of the class they seek to pursue and
 24 how it affects things such as the common issues subject to class discovery, the
 25 timeframe needed for discovery, and the relevant and necessary expert and fact
 26 witnesses. Indeed, “[d]epending on the scope of the final [*Hernandez*]

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1 settlement, denying the stay could burden [Wells Fargo] and Plaintiff[s] by
 2 requiring them to expend additional resources to litigate claims that might be
 3 precluded,” and “actions taken by this Court would [thus] unnecessarily duplicate
 4 the time and energy already expended in settling the [*Hernandez*] dispute.”
 5 *Casserly*, 2011 WL 13220130, at *2. Stated differently:

6 If the court does not grant the stay, [Wells Fargo] could be forced to
 7 defend against plaintiffs who are barred from participating in the
 8 litigation by the [*Hernandez*] settlement. The proposed settlement
 9 class in [*Hernandez*] is nationwide. It includes both [Plaintiffs] and
 10 the [bulk of the] Washington-homeowner class in this action. If the
 11 court allows the present suit to continue without first determining
 12 the status of the [*Hernandez*] settlement class, the uncertainty as to
 the ability of both [Plaintiffs] and the putative class to participate in
 the litigation could cause considerable hardship to [Wells Fargo],
 complicate the litigation, and waste judicial resources. If the court
 grants the stay, however, the [*Hernandez*] settlement could simplify
 matters for this court by determining the landscape of plaintiffs who
 are permitted to bring or participate in suits against [Wells Fargo].

13 *Pearson*, 2014 WL 2452802, at *4.

14 This factor therefore weighs in favor of a stay.

15 **3. A Stay Will Promote the Orderly Course of Justice.**

16 The third factor looks to whether a stay will promote judicial economy by
 17 “simplify[ying] the issues, proof, and questions of law.” *Pearson*, 2014 WL
 18 2452802, at *3. As discussed above, there is substantial overlap between the
 19 putative class asserted in this case and the settlement class in *Hernandez*, and a
 20 stay would avoid duplicative litigation with respect to that overlap.
 21 As the Court previously recognized, if there were, in fact, significant overlap
 22 between *Hernandez* and this case, a stay would promote judicial economy. *See*
 23 Dkt. 68 at 9 (finding a stay would not promote judicial economy at the time
 24 because the identity of the parties was not clear). Indeed, because approval of
 25 the *Hernandez* settlement will result in fewer class members, fewer claims, and
 26

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1 fewer issues for the Court to resolve, “[a] stay at this time furthers the orderly
 2 course of justice as it will refine issues and questions of law.” *Hurrie v. Real*
 3 *Time Resolutions, Inc.*, 2016 WL 4575740, at *2 (W.D. Wash. Jan. 6, 2016)
 4 (granting motion to stay pending final approval of class action settlement in
 5 another court: “Staying this case ensures the Court and the parties do not waste
 6 time and resources addressing issues that may change or become moot. The
 7 possible prejudice that may result from the stay is also minimal. The proposed
 8 class will be compensated if their claims are meritorious. Moreover, [plaintiff]
 9 can still pursue his individual claims in this case by opting out of any settlement
 10 that may be approved”); *see also Pearson*, 2014 WL 2452802, at *4 (“If the
 11 court allows the present suit to continue without first determining the status of
 12 the ... settlement class, the uncertainty as to the ability of both [plaintiffs] and
 13 the putative class to participate in the litigation could cause considerable hardship
 14 to [defendant], complicate the litigation, and waste judicial resources.”); *Jinni*
 15 *Tech, Ltd. v. Red.com, Inc.*, 2018 WL 5312200, at *5 (W.D. Wash. Oct. 26, 2018)
 16 (“The court finds that there is a significant overlap of the issues such that a limited
 17 stay pending resolution of the California case would benefit the orderly course of
 18 justice.”); *Puget Soundkeeper Alliance v. APM Terminals Tacoma, LLC*, 2017
 19 WL 11496652, at *1 (W.D. Wash. May 16, 2017) (granting stay when resolution
 20 of related litigation “may resolve key issues in this case”).

21 In sum, the requested stay will cause no or negligible prejudice to
 22 Plaintiffs, will avoid hardship and inequity to Wells Fargo, and will promote
 23 judicial economy by conserving resources and avoiding duplicative litigation. A
 24 stay should accordingly be granted pending final approval of the proposed class
 25 settlement in *Hernandez*.
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1 **IV. CONCLUSION**

2 For the foregoing reasons, Wells Fargo requests that these proceedings be
3 stayed until the United States District Court for the Northern District of California
4 has ruled on whether to grant final approval of the proposed class settlement in
5 *Hernandez*.

6
7 DATED: April 20, 2020

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on April 20, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will automatically generate a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

DATED this 20th day of April, 2020, at Seattle, WA.

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